IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 3934 of 2005(R)

PETITIONER:

SALAM S/O. ABDUL KADER,
RESIDING AT CC V/586, NEAR OUT AGENCY,
MATTANCHERRY VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SRI.MATHAI VARKEY MUTHIRENTHY
SRI.ICANS C.CHAMAKKALA
SRI.DHANESH MATHEW MANJOORAN
SMT.AJITA PAUL

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY, MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)NEW DELHI.

2. STATE OF KERALA REPRESENTED BY
THE HOME SECRETARY, THIRUVANANTHAPURAM.
(CRIME NO.227/02 OF MATTANCHERRY POLICE STATION)

BY
SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.C. 3934 OF 2005

APPENDIX:

PETIITONER'S EXTS:

EXT.P1: TRUE COPY OF THE ORDER IN BAIL APPLN..NO. 6823/04 DT. 20-=12-04.

EXT.P2: TRUE COPY OF THE ORDER IN CRL.M.C.1498/04 DT. 5-10-2004.

TRUE COPY

P.S.TO JUDGE

ks.

PIUS C. KURIAKOSE, J.

W.P.(C)No. 3934 OF 2005

DATED THIS THE 30th July, 2007

J U D G M E N T

The accused in S.C.No.156/2004 arising from Crime No. 227/2002 of Mattancherry police station alleged to have been in possession of 1675 ampules of Buprenorphine Tidigesic and made to stand trial for an offence under Section 2© of the Narcotic Drugs & Psychotropics Act has filed this writ petition under Articles 227 and 226 of the Constitution on account of what is described as a judicial turmoil resulting from conflicting views as to what is more quantity and what is commercial quantity of Buprenorphine Tidigesic for the purpose of incrimination under the N.D.P.S.Act, 1985. The petitioner refers to the judgment of this Court in **Shaji v. Kerala State 2004 (3)K.L.T. 270** and submits that going by the above judgment, the quantity allegedly possessed by the petitioner (1675 ampules containing 2 millilitres of buprenorphine tidigesic) is much above the commercial quantity. The petitioner also refers to the judgment of the Supreme Court in **Sajan Abraham v. State of Kerala 2004(2) K.LT.122(SC)** and also the judgment of the Supreme Court in **Ouseph alias Thankachan v. State of Kerala 2004(4)SCC 446**

and submits that going by those judgments of the Supreme Court, the quantity possessed by the petitioner will be below the commercial quantity. The punishment prescribed for possessing tidigesic below the commercial quantity is the maximum of 10 years and fine upto Rs.one lakh only whereas with a quantities above the commercial quantity the punishment can go upto 20 years and unlimited amount of fine. The petitioner contends that the judgment of the Supreme Court is binding on all courts in India and is followed by all those courts. However, the Sessions Judges and Judges of the Subordinate Judiciary in Kerala are following the judgment of the Supreme Court in 2004(3)K.L.T.270 (supra) and this situation is resulting in legal prejudice to the accused who are facing trial in the Kerala State. It is therefore necessary that the small quantity and commercial quantity of Buprenorphine tidigesic which is presently available in liquid form is fixed with reference to the proviso to Explanation in section 2 and in exercise of the powers conferred in Clause 7(a) and 23(a) of Section 2 of the N.D.P.S.Act, 1987. The petitioner contends that it is the duty of the first respondent Union Government to fix small quantity and commercial quantity not by weight but in millilitres since the contraband is in liquid form.

2. A detailed counter affidavit has been filed on behalf of the first respondent and in paragraph 5 thereof it is stated as follows:

> It is specifically submitted that "Buprenorphine" injection or "Buprenorphine" Hydrochloride injection is a sterile solution of Buprenorphine Hydrochloride in water for injection and the standards for the same are given in the Indian Pharmacopoeia, 1996. As per Indian Pharmacopoeia, 1996 small quantity and commercial quantity of Buprenorphine is fixed as follows:
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> It is respectfully submitted that as per the Indian Pharmacopoeia standards one gram of Buprenorphine is 3333.33 millilitres when it is in liquid form for the purpose of small quantity. For the purpose of commercial quantity 20 grams of Buprenorphine is 66666.60 millilitres when it is in liquid form.

Small Quantity of Buprenorphine		Commercial Quantity of Buprenorphine	
As per Notification S.O.527(E) dated 16.7.1996 of M/O.finance, D/O.revenue	Equivalent quantity in Milliliters in its present available liquid form as per IP, 1996 standards.	As per Notification S.O.527(E) dated 16.7.1996 of M/O finance, D/O.Revenue	Equivalent quantity in Milliliters in its present available liquid form as per IP, 1996 standards.

3. Even though Sri. M.V.Mathai Muthirenthy, learned counsel for the petitioner addressed me at length with reference to the averments

in the writ petition and the grounds raised therein and the learned counsel drew my attention to the apparent conflict between the judgment of the Supreme Court and that of the Division Bench of this Court in view of the stand taken by the first respondent through the counter affidavit before this Court and the submissions of the learned Assistant Solicitor General Sri. Parameswaran Nair at the bar, it is not necessary that the issue is discussed and gone into by this Court elaborately. It is not in dispute that it is necessary that small quantity and commercial quantity of buprenorphine tidegisic is fixed in milliliters considering the liquid form of the substance. The Government have relied on Indian Pharmacopoeia 1996 and taken the stand that 1 gram of buprenorphine corresponds to 3333.33 milliliters and 20 grams corresponds to 66666.60 milliliters. Ultimately Mr.Mathai Muthirenthi also submitted that it will suffice, if the above stand of the first respondent taken on the basis of Indian Pharmacopoeia 1996 be given the fiat of the court .

Under the above circumstances, the writ petition will stand disposed of declaring that 1 gram of buprenorphine is equivalent to 3333.33 milli liters when it is a liquid form for the purpose of small

quantity and declaring further that for the purpose of commercial quantity of 20 grams of buprenorphine is equivalent to 66666.60.

ks. **(PIUS C.KURIAKOSE, JUDGE)**